shall become void, it is a good defense to an action on the policy that the premium notes were unpaid at the time of the loss. *American Ins. Co. v. Leonard,* 80 Ind. 272; *Thompson v. Knickerbocker Ins. Co.,* 104 U. S. 252. But if there is no stipulation to that effect, failure to pay a premium note at maturity will not defeat the policy. *Trade Ins. Co. v. Barracliff,* 45 N. J. Law, (16 Vroom) 543. And a stipulation in the premium note itself that its non-payment shall avoid the policy (no such provision being contained in the policy) is nugatory. *Ins. Co. v. Hardie,* 37 Kan. 674. However, where a company claims a forfeiture for non-payment of a premium note, it must offer to surrender the note. It cannot forfeit the policy and keep the note. *Johnson v. Southern Mut. Ins. Co.,* 79 Ky. 403.

LIBEL AND SLANDER—EVIDENCE.—DENNISON V. DAILY NEWS PUB. CO., 118 N. W. 568 (NEB.).—*Held,* that in a civil action to recover damages for libel, it is proper to produce evidence showing the relations existing between the plaintiff and the author of the alleged libel, for the purpose of proving that the plaintiff was the person referred to, when his name does not appear in the article, and the defendant does not admit that he is the one referred to.

In an action for libel, the plaintiff may show by extrinsic evidence that the publication referred to him, though it did not name him. *Van Ingen v. M. & E. Pub. Co.,* 35 N. Y. Supp. 838. And where the person is ambiguously described, extrinsic evidence may be admitted to establish the identity. *Mix v. Woodward,* 12 Conn. 262; *Van Vechten v. Hopkins,* 5 Johns 211. It was further held in *Mix v. Woodward, supra,* that the plaintiff is at liberty to prove that the libel was published of and concerning him in the same manner and by the same kind of evidence as he might prove any other fact in the case. But an acquaintance of the plaintiff cannot testify that, uopn reading the libellous publication, he understood it to refer to the plaintiff. *White v. Sayward,* 35 Me. 322. *Contra: Enquirer Co. v. Johnston,* 72 Fed. 443.

MALICIOUS PROSECUTION—PROBABLE CAUSE—CONVICTION.—SMITH V. THOMAS ET AL., 62 S. E. (N. C.) 772.—*Held,* that probable cause for a prosecution, barring an action for malicious prosecution, is conclusively established by a conviction, on a confession of guilt before a justice having jurisdiction of the offense, though there was a reversal on appeal.

To sustain an action for malicious prosecution, it must be shown that probable cause was lacking for the institution of the proceedings complained of. *Ferguson v. Arnow,* 142 N. Y. 580. A conviction is conclusive evidence of probable cause. *Herman v. Brookerhoff,* 8 Watts (Pa.) 240. But whether or not this proposition is true when the conviction is followed by an appeal and acquittal gives rise to a conflict of opinion. The weight of authority holds in the affirmative. *Morrow v. Wheeler & Wilson Mfg. Co.,* 165 Mass. 349; *Crescent City L. S. Co. v. Butcher's Union,* 120 U. S. 141. But generally with the qualification that the conviction in the lower court must have been procured without fraud or other undue means. *Murphy v. Ernst,* 46 Neb. 1. Another line of authori-

ties holds, however, that a conviction followed by a reversal upon appeal is not conclusive of probable cause, but is deserving of great consideration. *Goodrich v. Warner,* 21 Conn. 432; *Richter v. Koster,* 45 Md. 441.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—ACTIONS—RELATION OF PARTIES.—HIROUX V. BAUM ET AL., 118 N. W. 533 (WIS.).—*Held,* that one who is running an automobile at the time of a collision with a person in the street is *prima facie* the servant of the owner of the automobile.

The responsibility of the master for the tortious acts of his servants grows out of, is measured by, and begins and ends with his control over them. *Caudup v. Schreiner,* 98 Ill. App. 337, and the master is not responsible for acts of the servant, unless the acts were done in the execution of the authority, express or implied given by the master. *Little Miami R. R. Co. v. Wetmore,* 19 Ohio 110. So a master is not liable for an injury occasioned by the negligence of servant, while driving the horse and carriage of the master in his absence. *Parsons v. Winchell et al.,* 5 Cush. 592. *Contra*: *Evans v. Davidson,* 53 Md. 245. If servant does the act in the execution of the authority given by the master, the master is responsible, whether the wrong done be occasioned by negligence or by a wanton and reckless purpose. *Howe v. Newmarch,* 12 Allen (Mass.) 49; *Garretzen v. Duenckel,* 50 Mo. 104. A somewhat analogous case is that of *Reynolds v. Buck,* 127 Ia. 601, where it was held that the owner of an automobile is not liable for an injury resulting from the negligent operation of the machine by his son, without the father's knowledge and consent, and not at the time in his employ or about his business.

MASTER AND SERVANT—INJURY TO SERVANT—ASSUMPTION OF RISK.—GILMARTIN ET AL. V. KILGORE, 114 S. W. 398 (TEX.).—*Held,* that an experienced employee who undertakes work with knowledge of a defect in an appliance and of the danger involved in its use and with time for deliberation, assumes the risk of the resulting injury, though the work is performed over the protest and by the express command of the employer.

It is a well settled rule that a servant who knowingly undertakes a hazardous work assumes all risk. *Coal Co. v. Jones,* 127 Ill. 379. And the law will presume that he assumed the risk when he entered upon the duties of the position. *Woodworth v. St. Paul, etc.,* 18 Fed. 282. Yet the employee may contract to the contrary. *Foster v. Pussey,* 14 Atl. 545. But where the master coerces the servant into entering dangerous work, the servant does not assume risk. *Wells, French Co. v. Gortorski,* 50 Ill. App. 445. And there is no obligation on servant to continue at work under protest. *Reese v. Clark,* 146 Pa. 465; *Snowberg v. Nelson,* 43 Minn. 532. The rule rests on the theory that the master is under no obligation to take more care of the servant than the servant takes of himself. *Penn. Co. v. Lynch,* 90 Ill. 333; *I. B. W. R. R. Co. v. Flannigan,* 77 Ill. 365. But *Graham v. Newburg Orrel Coal & Coke Co.,* 38 W. Va. 273, holds that the servant can assume a small risk without forfeiting his right to recovery.